

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3184 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil  
Judge? No

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RAJKOT MUNICIPAL CORPORATION

Versus

STATE OF GUJARAT

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Appearance:

Shri N.K.PAHWA, Advocate, for Shri P.M. THAKKAR,  
Advocate, for the Petitioner.

Shri T.H.Sompura, Assistant Government Pleader, for  
Respondents Nos.1, 2 and 3.

Shri S.R.Brahmbhatt, Advocate, for Messrs N.J. MEHTA  
and Associates for Respondent No. 4.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 04/04/96

## ORAL JUDGEMENT

The order passed by the Additional Mamlatdar for the City of Rajkot at Rajkot (respondent No.3 herein) on 12th March 1982 as affirmed in revision by and on behalf of the State of Gujarat (respondent No.1 herein) by the order passed on 31st August 1982 is under challenge in this petition under Article 227 of the Constitution of India. By his impugned order, respondent No.2 held one parcel of land bearing survey No.625/626 admeasuring about 284 square yards (the disputed land for convenience) to be government land and to have been encroached by and on behalf of one Reliance Construction Company through the present petitioner and ordered summary eviction therefrom and imposed fine of Rs.5/- on the petitioner for such encroachment.

2. The facts giving rise to this petition move in a narrow compass. It appears that the petitioner claimed to be the occupant of the disputed land on the ground of its vesting in the erstwhile Municipality of Rajkot, later on becoming the Municipal Corporation of Rajkot (the petitioner herein). It appears that the disputed land was allotted by and on behalf of respondent No.1 on 20th October 1972 to one Laxmandas Pohumal (the deceased for convenience) being the predecessor-in-title of respondents Nos.4/1 to 4/4 herein. It appears that the order allotting such land to the deceased was challenged by the Municipality before the High Court. The possession of the disputed land could therefore not be handed over to the deceased. It appears that the petitioner undertook the underground drainage work and entrusted the work in that regard to one Reliance Construction Company. It appears that respondent No.2 thereupon undertook the proceeding under section 61 of the Bombay Land Revenue Code, 1879 (the Code for brief) for summary eviction of said Reliance Construction Company on the ground that the disputed land was a government waste land. After hearing the parties, by his order passed on 12th March 1982 under section 61 of the Code, respondent No.2 came to the conclusion that the disputed land was the government waste land and it was unauthorisedly encroached upon by and on behalf of the petitioner herein and he therefore ordered summary eviction of the petitioner through its agent and imposed fine of Rs.5/- on it. Its copy is at Annexure-A to this petition. The aggrieved petitioner carried the matter in revision before respondent No.1 presumably under section 211 of the Code. By the order passed by and on behalf of respondent No.1 on 31st August 1982, the petitioner's revisional application came to be rejected. Its copy is

at Annexure-B to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in revision by the order at Annexure-B to this petition.

3. Learned Assistant Government Pleader Shri Sompura for respondents Nos.1, 2 and 3 has raised a preliminary objection against maintainability of this petition on the ground that this petition under Article 227 of the Constitution of India is not maintainable. Thereupon, learned Advocate Shri Pahwa for the petitioner has orally applied for treating this petition as also under Article 226 of the Constitution of India. Such oral request made by and on behalf of the petitioner is accepted and this petition is treated as also under Article 226 of the Constitution of India on payment of the deficit court fees, if any.

4. It cannot be gainsaid that the petitioner Corporation claims to be the occupant of the disputed land on the ground that it has vested in the Municipal Corporation as successor of the erstwhile Municipality of Rajkot. It becomes clear from the impugned order at Annexure-A to this petition that it was passed under section 61 of the Code rejecting the claim of the petitioner to be its occupant. I think respondent No.2 could not have decided the merits of the claim of the petitioner as to the occupation of the disputed land.

5. If there is a claim against any Government land, it has to be decided by the authority under section 37 (2) of the Code. It cannot be decided in a collateral proceeding under section 61 of the Code.

6. It may also be noted that the claim against the Government land was made by the petitioner as the Municipal Corporation of Rajkot. In this connection, a reference deserves to be made to section 80 of the Bombay Provincial Municipal Corporations Act, 1949 (the Act for brief). It has inter alia been provided in sub-section (1) thereof that any claim with respect to any immovable property by or on behalf of the Corporation will have to be adjudicated upon by the Collector after a formal inquiry. It cannot be gainsaid that section 37 (2) of the Code is a general provision affecting all persons including private parties to get their claim adjudicated by the authorities named therein if such claim is against any Government property. The Act is certainly a special enactment pertaining to the Municipal Corporation

established thereunder. It is true that the Municipal Corporation is also a person for the purpose of section 37 (2) of the Code. However, a provision is made in section 80 (1) of the Act regarding decision on the claim made by or on behalf of Municipal Corporation against any property. It would be a special provision. According to the settled principles of interpretation, a special enactment would prevail over a general enactment if both operate technically in the same field. In that view of the matter, the claim of the petitioner with respect to a land stated to be belonging to the Government will have to be adjudicated upon in accordance with section 80 (1) of the Act.

7. As pointed out hereinabove, the order at Annexure-A to this petition has not been passed in accordance with section 37 (2) of the Code. It may be noted that the statutory provision in that regard confers a substantive right on a party and the proceeding in that regard cannot be in the nature of a collateral proceeding. The formal inquiry contemplated therein should be a separate inquiry and it could not be a part of any proceeding under any other provisions of the Code. In that view of the matter, even if it is accepted that there is no material difference between Section 37 (2) of the Code and section 80 of the Act, the impugned order at Annexure-A to this petition as affirmed in revision by the order at Annexure-B to this petition cannot be sustained on the ground that the claim of the petitioner has been decided in a collateral proceeding and not in a substantive proceeding under section 37 (2) of the Code or under section 80 of the Act.

8. It may be mentioned at this stage that in the affidavit-in-reply it has been stated in para 16 that an inquiry under section 37 (2) of the Code was contemplated in respect of the disputed land and it was held to be the Government land. In the rejoinder affidavit, the petitioner has denied any decision in that regard. It must be said to the credit of learned Assistant Government Pleader Shri Sompura for Respondents Nos.1, 2 and 3 that he kept certain officers from the Collectorate at Rajkot present with the record of the case. Learned Assistant Government Pleader Shri Sompura has shown the record to this court for perusal and it transpires therefrom that the decision under section 37 (2) of the Code did not pertain to the disputed land. It appears that the averment made in para 16 of the reply affidavit was inadvertently made without any intention to mislead this court. I have therefore chosen to ignore it for the purpose of deciding the merits of this case.

9. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-A to this petition as affirmed in revision by the order at Annexure-B to this petition cannot be sustained in law. It has to be quashed and set aside.

10. In the result, this petition is accepted. The order passed by the Additional Mamlatdar for the City of Rajkot at Rajkot on 12th March 1982 at Annexure-A to this petition as affirmed in revision by the order passed by and on behalf of the State Government on 31st August 1982 at Annexure-B to this petition is quashed and set aside. It is clarified that this judgment of mine shall not preclude the appropriate authority from instituting a formal inquiry under section 80 of the Act with respect to the disputed land. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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